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7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2010-570**

13 **KRISTEN MALENA OSTREM**
35 Cottonwood Lane
Corrales, NM 87048

ACCUSATION

14 Registered Nurse License No. 431869
Public Health Nurse Certificate No. 45009
15 Nurse Midwife Certificate No. 1243
Nurse Midwife Furnisher Certificate No.
16 1243
Nurse Practitioner Certificate No. 9451
17 Nurse Practitioner Furnisher Certificate No.
9451

18 Respondent.

19
20
21 Complainant alleges:

22 **PARTIES**

23 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
24 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
25 of Consumer Affairs.

26 2. On or about August 31, 1988, the Board of Registered Nursing issued Registered
27 Nurse License Number 431869 to Kristen Malena Ostrem (Respondent). The Registered Nurse
28 License expired on December 31, 2009, and has not been renewed.

1 3. On or about July 12, 1989, the Board of Registered Nursing issued Public Health
2 Nurse Certificate Number 45009 to Respondent. The Public Health Nurse Certificate expired on
3 December 31, 2009, and has not been renewed.

4 4. On or about May 15, 1997, the Board of Registered Nursing issued Nurse Midwife
5 Certificate Number 1243 to Respondent. The Nurse Midwife Certificate expired on December
6 31, 2009, and has not been renewed.

7 5. On or about March 3, 2000, the Board of Registered Nursing issued Nurse Midwife
8 Furnisher Certificate Number 1243 to Respondent. The Nurse Midwife Furnisher Certificate
9 expired on December 31, 2009, and has not been renewed.

10 6. On or about October 2, 1997, the Board of Registered Nursing issued Nurse
11 Practitioner Certificate Number 9451 to Respondent. The Nurse Practitioner Certificate expired
12 on December 31, 2009, and has not been renewed.

13 7. On or about October 27, 1999, the Board of Registered Nursing issued Nurse
14 Practitioner Furnisher Certificate Number 9451 to Respondent. The Nurse Practitioner Furnisher
15 Certificate expired on December 31, 2009, and has not been renewed.

16 17 JURISDICTION

18 8. This Accusation is brought before the Board of Registered Nursing (Board),
19 Department of Consumer Affairs, under the authority of the following laws. All section
20 references are to the Business and Professions Code unless otherwise indicated.

21 9. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
22 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
23 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
24 Nursing Practice Act.

25 10. Section 2761 of the Code states:

26 "The board may take disciplinary action against a certified or licensed nurse or deny an
27 application for a certificate or license for any of the following:

28 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

11

11. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

12. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

13. Section 2746.5 of the Code states, in pertinent part:

“(a) The certificate to practice nurse-midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.

“(b) As used in this chapter, the practice of nurse-midwifery constitutes the furthering or undertaking by any certified person, under the supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician immediately. The practice of nurse-midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.

“(c) As used in this article, “supervision” shall not be construed to require the physical presence of the supervising physician.”

14. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

15. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

16. Section 2811(b) of the Code provides, in pertinent part, that the Board may renew an expired license at any time within eight years after the expiration.

17. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

18. At all relevant times, Respondent was employed at Sutter Lakeside Hospital in Lakeport, California, as a nurse-midwife. At 12:50 p.m. on February 7, 2001, Patient T.B.¹ was admitted to the labor and delivery unit at Sutter Lakeside Hospital in labor with her first baby at 39 5/7 weeks gestation. Her pre-natal course had been normal with blood pressures in the ranges of 120-150 systolic and 60-80 diastolic. Her membranes had ruptured spontaneously at 11:00 on February 7, 2001. An external fetal monitor was applied, revealing a fetal heart rate baseline in the 120's, with accelerations to the 150's, and no decelerations. Uterine contractions were every 18-20 minutes, and there was light meconium.² Upon admission, T.B.'s blood pressure was elevated (149/99) and she had 2+ pitting edema of her lower legs and ankles. A urine dip was ordered to check for protein in the urine.

¹ The patient's initials are used herein to protect her privacy. The patient's name and identifying information will be released pursuant to a discovery request.

² Meconium is the first stool of an infant, usually passed after delivery, but sometimes present in the amniotic fluid. Presence of meconium in amniotic fluid can be a sign of fetal distress. Meconium aspiration syndrome is when the fetus aspirates meconium prior to delivery, which can result in respiratory problems, which can cause hypoxia (oxygen deprivation).

1 19. After T.B. was admitted, Respondent was called and informed of the patient's status.
2 Respondent first arrived to see T.B. at 15:00 on February 7, 2001, and subsequently left the
3 hospital.

4 20. At 17:45 Cervidil was placed to stimulate labor (Cervidil promotes cervical dilatation
5 and effacement). The fetal heart rate was noted to be stable and reactive, and maternal vital signs
6 were stable. The cervix was 1.5 centimeters dilated, and 60% effaced, and the vertex was at -1
7 station.

8 21. At 21:25 a good response to the Cervidil was noted. T.B. was having strong
9 contractions every two minutes and the cervix was 3 centimeters dilated and 100% effaced.
10 Intermittent fetal monitoring was ordered.

11 22. At 23:00 the labor and delivery nurse called Respondent to give her an update on
12 T.B.'s status, which was that she was contracting every 2-3 minutes, that the fetus was having
13 decelerations³, and that T.B.'s blood pressure was elevated (159/102).

14 23. At 23:30 T.B.'s blood pressure was 154/94, and at 00:15 it was 161/94. At 00:30
15 Respondent was called to return to the hospital. Decelerations continued during this time. T.B.'s
16 blood pressure remained elevated with readings of 142/79 at 00:45 and 161/100 at 01:00.
17 Respondent arrived on the unit at 01:04, and T.B. was instructed to start pushing. After T.B. had
18 been pushing for over two hours, the physician was called to come in at 03:27. Decelerations
19 continued during this time period. Spontaneous vaginal birth was accomplished at 03:52 on the
20 morning of February 8, 2001. The baby was delivered by Respondent because the physician was
21 still en route. At birth, the baby boy, J.B., was depressed (not adequately responsive), and he
22 suffers from spastic cerebral palsy as a result of hypoxia during the delivery process.

23
24 FIRST CAUSE FOR DISCIPLINE
25 (GROSS NEGLIGENCE)

26 ³ Decelerations of the fetal heart rate can be visualized on the electronic fetal heart rate
27 tracing. They can be a normal result of uterine contractions, or they can suggest fetal distress,
28 which can ultimately lead to fetal injury or demise.

24. Respondent is subject to disciplinary action under section 2761(a) in that she was grossly negligent when she failed to call the physician at 23:00 when she was advised of T.B.'s elevated blood pressure and decelerations.

25. Respondent is subject to disciplinary action under section 2761(a) in that she was grossly negligent when she allowed T.B. to push for more than two hours before communicating with the physician, in light of the elevated blood pressures and decelerations.

26. Respondent is subject to disciplinary action under section 2761(a) in that she was grossly negligent when she failed to go to the hospital at 23:00 when she was advised of the elevated blood pressure and the decelerations.

27. Respondent is subject to disciplinary action under section 2761(a) in that she was grossly negligent when she failed to place a fetal scalp electrode⁴ to monitor the fetal heart rate.

SECOND CAUSE FOR DISCIPLINE

(INCOMPETENCE)

28. Respondent is subject to disciplinary action under section 2761(a) in that she was incompetent when she prepared all of her charting after the birth of J.B.

29. Respondent is subject to disciplinary action under section 2761(a) in that she was incompetent when she failed to recognize sustained hypertension displayed by T.B.

30. Respondent is subject to disciplinary action under section 2761(a) in that she was incompetent when she did not continuously monitor the fetal heart rate.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 431869, issued to Kristen Malena Ostrem.

⁴ Typically, a fetus's heart rate is monitored by an external monitor placed on the mother's abdomen. A fetal scalp electrode is attached directly to the fetus's scalp. It is used when the fetal heart rate cannot be picked up by an external monitor or when the heart rate evidences fetal distress that warrants closer observation.

2. Revoking or suspending Public Health Nurse Certificate Number 45009, issued to Kristen Malena Ostrem.
3. Revoking or suspending Nurse Midwife Certificate Number 1243, issued to Kristen Malena Ostrem Kristen Malena Ostrem.
4. Revoking or suspending Nurse Midwife Furnisher Certificate Number 1243, issued to Kristen Malena Ostrem Kristen Malena Ostrem.
5. Revoking or suspending Nurse Practitioner Certificate Number 9451, issued to Kristen Malena Ostrem Kristen Malena Ostrem.
6. Revoking or suspending Nurse Practitioner Furnisher Certificate Number 9451, issued to Kristen Malena Ostrem Kristen Malena Ostrem.
7. Ordering Kristen Malena Ostrem to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
8. Taking such other and further action as deemed necessary and proper.

DATED: _____

5/3/10

Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2010200422